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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
LEAVE TO FILE UNDER SEAL
AND INCORPORATED
MEMORANDUM OF LAW**

(Assigned to the Honorable David G.
Campbell)

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
“Bard”) hereby respectfully move this Court, pursuant to the Stipulated Protective Order
(Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for
leave to file under seal Bard’s Submission in Opposition to Plaintiffs’ Proposed
Bellwether Group 1 Selections and certain accompanying Exhibits. Defendants’
Submission and Exhibits contain certain Plaintiffs’ personal healthcare information that is
protected under HIPAA and confidential under the Stipulated Protective Order,

1 warranting protection from public disclosure. In addition, the Submission and one of the
 2 accompanying Exhibits contain pieces of highly competitive, confidential, proprietary
 3 information, thereby, also warranting protection from public disclosure. Accordingly,
 4 there is good cause to grant Bard's Motion for Leave to File Under Seal. Bard has
 5 conferred with Plaintiffs' counsel and confirmed that they do not oppose this Motion.
 6 However, Plaintiffs reserve the right to challenge any of the confidential designations
 7 pursuant to the Stipulated Protective Order (Doc. 269, ¶ 2) at a later time.

8 **ARGUMENT AND CITATION OF AUTHORITY**

9 Bard's Submission in Opposition to Plaintiffs' Proposed Bellwether Group 1
 10 Selections and some of the accompanying Exhibits contain certain Plaintiffs' personal
 11 health care information. Portions of the Submission itself, as well as Exhibit A (Plaintiff
 12 Profile Form for Cory Behlke), Exhibit G (Excerpts from Deposition of David Henry,
 13 M.D., pertaining to Lisa Hyde), and Exhibit H (Excerpts from Deposition of William Kuo,
 14 M.D., pertaining to Lisa Hyde), discuss particular plaintiffs' respective medical histories
 15 and current medical conditions, are confidential under the terms of the Stipulated
 16 Protective Order (Doc. 269), and are also protected from public disclosure pursuant to
 17 HIPAA. Indeed, the Court has already sealed similar information in this litigation.

18 Similarly, portions of the Submission itself, as well as Exhibit E (Internal Chart of
 19 Bard IVC Filter Complication Rates through December, 2016) contain pieces of highly
 20 competitive, confidential, proprietary information that warrant protection under Federal
 21 Rule of Civil Procedure 26(c)(1)(G) because the documents are not made public by Bard
 22 and, if obtained by Bard's competitors, could give an unfair economic advantage to those
 23 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL
 24 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d
 25 772, 786 (3d Cir. 1994)). Indeed, Bard has already produced Exhibit E and designated it
 26 as "CONFIDENTIAL" pursuant to Stipulated Protective Order (Doc. 269), ¶ 6.

27 **CONCLUSION**

28 For all of the foregoing reasons Bard requests that the Court grant its Motion for

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1 Leave to File Under Seal.

2 RESPECTFULLY SUBMITTED this 28th day of April, 2017

3
4 By: s/ Richard B. North, Jr.

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15 Peripheral Vascular, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/ Richard B. North, Jr.

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